IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5328 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VADILAL SOMABHAI PATEL

Versus

THE STATE OF GUJARAT

Appearance:

MR UM SHASTRI for Petitioner

MS VK PAREKH for Respondent No. 1, 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 26/04/2001

ORAL JUDGEMENT

1. Vadilal Somabhai Patel, petitioner has filed this petition with a prayer that the State of Gujarat through the Secretary, Irrigation Department and Deputy Agricultural Director may be directed to regularize the

services of the petitioner on the post of peon in the respondent's department. This petition was filed on 13th April, 1994.

2. The facts giving rise to this petition are as under :-

2.1 It has been contended by the petitioner that petitioner was working as a daily wager peon since 5th February, 1980. In fact he has produced certain documents which show that he has been employed in this behalf. He has also produced a Circular dated 17th October, 1988 issued by the respondent which provides regularization of certain employees working in the said department on certain conditions. He has also produced certain other resolution in this behalf.

3. During the pendency of the petition, it appears that the union in which the petitioner is a member has filed Reference (IT) No.166 of 1987 before the Industrial Tribunal, Ahmedabad wherein the union has prayed that all these employees who are working in the said union like petitioner and others may be regularized by the Government. It appears that through mistake when the union submitted the list of employees, the present petitioner was shown as Sr.No.5. However, the date of joining which shows as 16th October, 1985 through over sight. In fact actually he was employed on 5th February, 1980. The petitioner submits that the petitioner through his union raised an Industrial Dispute before the Assistant Labour Commissioner and ultimately, it was referred for adjudication before the Industrial Tribunal, Ahmedabad by way of Reference I.T.No.166 of 1987. The Industrial Tribunal by its judgment and award dated 18th April, 1999 directed certain employees to be regularized. However, the name of the petitioner was excluded on the ground that he has joined his service on 1st January, 1984. It appears that thereafter, the union has filed an application pointing out obvious mistake that the Tribunal should give similar benefits to the petitioner and other employees who are left out in this behalf, though this was not on record of this case, but from the record of the other petition namely proceedings which are subject matter of the Letters Patent Appeal No.117 of 1994, the judgment of which has been produced by the learned advocate for the petitioner. It appears that the union has filed certain application which Industrial Tribunal has rejected and, thereafter, the union filed a writ petition before this Court. In that writ petition it appears that the learned single Judge obserrved that the petitioner had not resorted to alternative remedy

available to him under the Industrial Disputes (Gujarat) Rules, 1966 also pointed out that certain rules of the Industrial Disputes and about the obvious mistake comitted by the Tribunal.

4. Being aggrieved and dissatisfied with the aforesaid judgment and order of this Court, one Ramabhai Dhulabhai Barot, petitioner along with the union has filed Letters Paten Appeal No.117 of 1994 before this Court. This Court (Coram : J. M. Panchal & P. B. Majmudar,J.) by its judgment and order dated 2nd December, 1999 has taken into consideration the entire historical background in this behalf and also considered the Industrial Disputes (Gujarat) Rules, 1966 and also accepted the arguments of the learned counsel for the petitioner that once the judgment of the Industrial Tribunal is over, the Tribunal becomes functus officio and there is no inherent power of the review with the Industrial Tribunal and, therefore, Industrial Tribunal cannot rectify obvious mistake. This Court has observed in paras-5 and 6 which are as under:-

"We have heard the learned counsel for the parties at length. We have also taken into consideration the documents which are produced on the record of the petition. It is not in dispute that the Agriculture and Rural Labour Association, Petlad had submitted a statement of claim before the Industrial Tribunal and appended a list of Rojamdars with reference to whom a prayer for regularization was made. In the said list it was mentioned that the appellant had joined service as Rojamdar on March, 15, 1987. The name of the appellant was mentioned according to their respective dates of joining service. At serial No.44, name of one Shashikant R. Parmar was mentioned indicating that he had joined service as Rojamdar on March, 1980. At serial No.46 in the said list, name of Mr.Thakorbhai G. Patel was mentioned and it was indicated that he had joined service as Rojamdar on March 19, 1980, but while showing mentioned in the said list that he had joined service as Rojamdar on March 15, 1987. This is an obvious mistake because if the appellant had joined service on March 15, 1987, then his name would not have figured between the names of Mr.Shashikant R. Parmar and Mr.Thakorbhai G. Patel. Even the letter dated July 18, 1991 addressed by respondent No.4 to respondent No.2 indicates that the appellant had joined as Rojamdar on March, 15, 1980 and not on

March 15, 1987 as is mentioned in the award of the Industrial Tribunal. The letter dated May 27, 1991 addressed by the Joint Director, Agriculture (Irrigation), Nadiad to the Tribunal makes it more than clear that the appellant had joined service as Rojamdar on March 15, 1980 and not on March 15, 1987 as was mentioned in the award of the Tribunal. Under the circumstances, we are of the opinion that in view of the obvious mistake committed while rendering the award, the application dated July 12, 1991 made by the appellant to the Registrar, Industrial Tribunal ought to have been accepted and appropriate modification in the award ought to have been made. It is incorrect to say that once an award is made, the Industrial Tribunal becomes functus officio and has no jurisdiction to correct error, apparent on the face of the record. The Registrar, Industrial Tribunal should not have directed the appellant to initiate other legal proceedings and should have entertained the application dated July 12, 1991 submitted by the appellant. Having regard to the facts of the case, we are of the opinion that the prayer made by the appellant to quash and set aside that part of the award dated April 17, 1990 rendered by the Industrial Tribunal, Ahmedabad in Reference (IT) No.166/87 by which he is denied the benefit of regularization, deserves to be set aside.

For the foregoing reasons, the appeal succeeds. The impugned order rendered by the learned single Judge is set aside. Special Civil Application No.389/94 partly succeeds. That part of the judgment and award dated April 17, 1990 rendered by the Industrial Tribunal, Ahmedabad, in Reference (IT) No.166/87 which denies the benefit of regularization to the appellant, is hereby set aside and quashed. It is held that the appellant is entitled to benefits of regularization in terms of award dated July 17, 1990 rendered by the Industrial Tribunal, Gujarat State, Ahmedabad in Reference (IT) No.166/87. The communication dated November 8, 1993 produced by the appellant at Annexure-F to the petition indicates that the award made by the Industrial Tribunal on April 17, 1990 in Reference (IT) No.166/87 is already implemented with reference to other employees. Therefore, the respondents are directed to implement the said award with reference to the appellant also immediately and shall accord all

benefits flowing from the said award to the appellant as early as possible and preferably within one month from the date of receipt of the writ. The appeal accordingly, stands allowed, with no order as to costs.

5. In view of aforesaid judgment, the learned advocate for the petitioner has stated that this petition may also be allowed because of the identical issue raised before this Court.

6. In my view, in view of the judgment of the Division Bench of this Court, where the identical issues have been raised by similar employees and when the Division Bench of this Court has granted the same relief as prayed for in this petition. This petition is allowed. Rule is made absolute. The respondent will also try to implement the award of the Industrial Tribunal dated 18th April, 1990. The respondent is directed to regularise the services of the petitioner on the post of peon. The Government will also give all the benefits to the petitioner - employee. I hope and trust that the respondent - Government will try to give all the benefits to this poor employee who has been deprived of livelihood only within four weeks from the date of receipt of the writ of this order.

(K. M. Mehta,J.)

(vrpanchal)*